IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2915 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI JIVRAJBHAI VAGHELA BHANGIVAS KHODIYAR POTARY

Versus

GEB, SECRETARY, VIDHYUT BHAVAN

Appearance:

1. Special Civil Application No. 2915 of 2000

MS SADHANA SAGAR for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR SP HASURKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

The grievance of the petitioner is that though he has been working on part time basis on the post of

Sweeper since 1st January, 1994, his service has not been regularized.

1.1. Vide order dated 26th December, 1980, the Finance Department of the State of Gujarat has issued a Circular directing all the Heads of the Departments of the Government to appoint part timers working on permanent post for more than three years, may be absorbed on the said post, if the vacancy is available. Inspite of such Circular, he has not been appointed on permanent basis.

1.2. It appears that the petitioner joined the service of the respondent since 1st January, 1994, and he rendered the duty as part time Sweeper in the respondent - Board. It appears that the aforesaid policy of the Government was adopted by the respondent - Board in one of its Circular dated 23rd February, 1992. The petitioner made a representation dated 22nd November, 1999, but the same was rejected. According to him, it was incumbent upon the respondent to appoint him on permanent basis on the post of Sweeper which is also Class-IV post.

2. Having gone through the record of the petition, it appears that the petitioner had joined the service on part time basis with effect from 1st January, 1994. At the time, he joined the service, he was required to work for two hours in a day at the monthly wage of Rs.225=00. It is stated that even today, he has been working with the respondent - Board on part time basis on monthly wage of Rs.450=00. It further appears from the record of the petition that the Circular dated 26th December, 1980 of the Department of the Finance, Government of Gujarat had been adopted by the respondent - Board by its own Circular dated 23rd February, 1992. Thus, the respondent - Board, had also directed its various departments to absorb or regularize the service of part timer on the post on which he had been working for more than three years and if that post was of permanent nature, and vacant.

3. As against that, no affidavit has been filed by the other side and the averments made in the petition remain uncontroverted.

4. The question regarding regularization of service on temporary or part time employee who has put in number of years of service has been considered and decided by this Court on 17th February, 2004 in Special Civil Application No. 10518 of 1998, which was filed against the present respondent Board. In view of the said

judgment, the present petition is required to be allowed since the issue involved in it stands squarely covered by the decision in the aforesaid matters and it is hereby ordered to be allowed with the following directions :-

The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, the petitioner shall be appointed on the same in accordance with his claim, in the matter of seniority and the Regulations and if otherwise, he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/